

Christine Joyce

6/4 (5)

From: Steve Ledoux
Sent: Tuesday, May 29, 2012 9:16 AM
To: Christine Joyce
Subject: Fwd: Fees for Sachem Way/ McCarthy Village

For agenda item on Housing Authority

Sent from my iPad, please excuse any brevity or typos

Begin forwarded message:

From: Frank Ramsbottom <framsbottom@acton-ma.gov>
Date: May 29, 2012 9:15:13 AM EDT
To: Steve Ledoux <sledoux@acton-ma.gov>
Subject: Fees for Sachem Way/ McCarthy Village

Hi Steve I saw several emails regarding the building permit fees for The Sachem Way project being built by the Acton Housing Authority. There had been some discussion about this last year and it was pointed out that since the project is receiving state funding the Housing Authority should include the fees as cost to be reimbursed by the state. If the State did not reimburse for the fees then at that time the selectmen may want to consider waving the building permit fees.

I have estimated about \$24,000 in building permit fees and another \$7,200 in plumbing, electrical and gas permit fees. The building permit fees are general fund fees while the P,E&G fees are revolving fund fees. If the Town of Acton chooses to waive the revolving fund fees they would have to cut a check to put the monies into the fund.

Frank Ramsbottom
Building Commissioner
Town of Acton, MA
472 Main Street, 01720
Phone # 978-929-6633
Fax # 978-263-9630

Christine Joyce

From: Kelley Cronin [kelley@actonhousing.net]
Sent: Wednesday, May 30, 2012 7:47 AM
To: Steve Ledoux; Janet Adachi
Cc: Christine Joyce; Brian McMullen
Subject: Acton Housing Authority Pilot Agreement
Attachments: PILOT Agreement June 2012.DOC; Nixon Peabody Memo PILOT-AHA LLC.DOC

Steve

Attached is a PILOT agreement for the Board of Selectmen's meeting on June 4, 2012. We used the Sudbury agreement as the model. I have also attached a memo from our attorney, Nixon Peabody, LLP, explaining the regulations and laws involved. Please let me know if you would like any other documents for the meeting.

Kelley A. Cronin, Executive Director
Acton Housing Authority
P.O. BOX 681
Acton, MA 01720
978-263-5339x7

NIXON PEABODY_{LLP}
ATTORNEYS AT LAW

TO: Acton Housing Authority (the “Authority”)
FROM: Nixon Peabody LLP
DATE: May 29, 2012
RE: Proposed Ownership Entity and Tax Exemption for McCarthy Village II

You have asked us to provide background information regarding the ownership structure of the McCarthy Village II project (the “Project”) and its continued tax exempt status under Massachusetts law.

1. Brief Answer.

Massachusetts General Law Chapter 121B, § 16 addresses the exemption from real estate taxation of properties owned by a housing authority and states:

“The real estate and tangible personal property of an operating agency [ie. housing authority] ... shall be deemed to be public property used for essential public and governmental purposes and shall be exempt from taxation and from betterments and special assessments...”

The Project will be owned and controlled by an instrumentality of the Authority. The Authority shall be the beneficial owner of the Project and therefore the Project should be exempt from real estate taxes. Pursuant to M.G.L. c. 121B § 16, the Town of Acton and the Authority may enter into a payment in lieu of taxes (“PILOT”) agreement applicable to the Project.

2. Background.

The Project is the proposed new construction of 12 family rental units by the Authority located on a parcel of land which includes an existing Authority public housing development. The Authority has received loan commitments from various funding sources including the Massachusetts Housing Partnership Fund, the Department of Housing and Community Development (the “Department”), and Town of Acton CPA funds. The Project will also include twelve (12) Section 8 project-based vouchers which utilize federal funding through the Department of Housing and Community Development. The lenders require that their loans be secured by collateral which must be located on a separate “parcel” from the existing development so that, in the unlikely event of a default, the lenders can take control of the Project without having to deal with the existing development.

3. Creation of AHA LLC to finance the Project.

In order to fulfill the requirements of the lenders, the Authority has formed AHA LLC, a Massachusetts limited liability company, as an instrumentality of the Authority, to develop and own the Project under a ground lease from the Authority. AHA LLC's sole member manager will be the Authority. AHA LLC will be wholly owned and controlled by the Authority. For income tax purposes, AHA LLC will be a disregarded entity and AHA LLC's tax returns will be filed under the Authority's federal tax ID number. Therefore, the Authority will be the beneficial owner of the Project and the Project shall be deemed the real estate of the Authority under M.G.L. c. 121B. Further, given AHA LLC's status as a disregarded entity, and for the other reasons set forth below, AHA LLC should be able to retain the same real estate tax exemption rights as the Authority under M.G.L. c. 121B.

4. M.G.L. Chapter 121B and Tax Exemption for Affiliated Entities.

M.G.L. c. 121B, § 26(m) contemplates the creation by a housing authority of affiliated entities in order to develop low and moderate income housing assisted pursuant to federal legislation. Pursuant to this section, a housing authority has the power to create, designate, or approve agencies or instrumentalities to provide housing pursuant to federal legislation and do all other things necessary or desirable to secure financial or other forms of assistance from the federal government. The creation of AHA LLC by the Authority is specifically permitted under this provision of Chapter 121B.

M.G.L. c. 121B, § 16 addresses the exemption from real estate taxation of properties owned and leased by a housing authority and states:

“Nothing in this chapter or in chapter fifty-nine shall be construed to require a city or town to impose a tax on the leasehold of real estate owned by an operating agency and leased by it beyond any amount which the city or town and the operating agency have agreed to be the payment in lieu of taxes.”

Pursuant to M.G.L. c. 121B, Section 16, an assessor may continue the real estate tax exemption of a property controlled and operated by a housing authority even after it has been ground leased to an affiliate entity. As the Project site is ground-leased to an instrumentality of the Authority, and the buildings will revert back to the Authority at the end of the lease, this provision of c. 121B allows the Town of Acton to continue the tax exempt status of the Project under a PILOT agreement.

Christine Joyce

From: Janet K. Adachi [jkajeg@msn.com]
Sent: Wednesday, May 23, 2012 2:31 PM
To: Steve Ledoux
Cc: Christine Joyce; Brian McMullen
Subject: Re: BOS, 6/4 agenda - room for AHA issues?

1) PILOT - AHA is proposing a payment in lieu of taxes that is calculated in accordance with the DHCD's current formula and is part of an agreement whose terms are DHCD'S boilerplate. AHA's attorneys wanted to see the old agreement but no one has been able to find it.

I'm not sure that finding the old agreement is necessary. Kelley says

- the calculation of the PILOT in the old agreement was based on the DHCD'S formula at the time, and
- DHCD has a standard agreement to serve as a model for the new agreement.

The only thing I don't and maybe Brian could pin down is how the DHCD's current formula would change the PILOT payment, if at all.

2) permit fees - I recall--I'm away from the house and don't have my meeting notes--that AHA also is looking for a break on fees but that ACHC has offered to use its funds to cover the cost if the Town would rather not forfeit the fees. I'll check my notes when I'm back home.

For the BOS meeting, we'd certainly need the draft agreement, plus someone, maybe Brian, to attend and help explain PILOT eligibility and calculation, what the BOS's role is, what AHA has been paying and since when, what the PILOT under the new agreement would be.

Janet K. Adachi
978-340-0746
Sent via iPhone wireless

On May 23, 2012, at 1:25 PM, Steve Ledoux <sledoux@acton-ma.gov> wrote:

Have not seen a copy of what they are proposing. BMAC, do you know??

Steven L Ledoux
Town Manager
472 Main Street
Acton, MA 01720
Telephone (978) 929-6611

When writing or corresponding, please be aware that the Secretary of State has determined that most email is a public record and, therefore, may not be kept confidential.

From: Janet K.Adachi [<mailto:jkajeg@msn.com>]
Sent: Wednesday, May 23, 2012 1:23 PM

To: Steve Ledoux; Christine Joyce
Subject: BOS, 6/4 agenda - room for AHA issues?

Steve, Christine,

Will there be room on 6/4 for AHA? If not, they need to be on the 6/18 agenda. Thanks. Janet

Begin forwarded message:

From: "Janet K. Adachi" <jkajeg@msn.com>
Subject: Re: Acton Housing Authority Pilot Agreement
Date: May 23, 2012 1:21:00 PM EDT
To: Kelley Cronin <kelley@actonhousing.net>

Kelley,

Let me check with Town Manager. The formal agenda-setting meeting isn't until next week, but he or his admin assistant Christine Joyce put together the draft and should have a sense of whether there would be room on 6/4 for the AHA issues. Janet

On May 23, 2012, at 1:10 PM, Kelley Cronin wrote:

Janet

Following up about the PILOT issue. Does the BOS or Town Manager need anything for this issue to get on the June 4th agenda?

Thank you,

Kelley

From: Kelley Cronin [<mailto:kelley@actonhousing.net>]
Sent: Friday, May 18, 2012 5:30 PM
To: 'Pamela Harting-Barrat'
Cc: 'Janet K Adachi'
Subject: Acton Housing Authority Pilot Agreement

Dear Pam and Janet

First I wanted to congratulate Pam on becoming the Chair of the Board of Selectmen and thank you for your support of the AHA during the past few years. Janet came to our Board meeting this week and let us know that she would most likely be serving as our BOS liaison. At the meeting we had the issue of our PILOT agreement on our agenda which I wanted to follow up with the BOS on. The Acton Housing Authority is a tax exempt entity and we have a PILOT agreement with the Town. The agreement is based on DHCD regulations which spell out what Housing Authorities are allowed to pay to Towns for their units. Neither the Housing Authority nor the Town can find a written agreement though we have years of tax records which demonstrate the rate at which we have been assessed and paid.

Our lenders are requiring a written agreement which states explicitly what the Housing Authority will pay the Town in lieu of taxes. I understand from Brian McMullen that the BOS will have to vote on this agreement and we are happy to draft a copy and send it to the Town Manager and BOS for your review and approval. I was hoping we could get on the agenda for the June 4th Board meeting.

Please let me know if we can get on the agenda for the June 4th meeting and I will send the documents requested to the Town Manager.

Thank you,

Kelley A. Cronin, Executive Director
Acton Housing Authority
P.O. BOX 681
Acton, MA 01720
978-263-5339x7

Christine Joyce

From: Janet K. Adachi [jkajeg@msn.com]
Sent: Wednesday, May 23, 2012 4:56 PM
To: Kelley Cronin
Cc: Steve Ledoux; Brian McMullen; Christine Joyce; Frank Ramsbottom
Subject: Re: BOS, 6/4 agenda - room for AHA issues?

Kelley,

I assume that in your cover e-mail or memo for the BOS packet, you'll also be addressing the issue of building fees waiver and the fact that ACHC would be willing to cover those fees in the event BOS doesn't wish to waive. Janet

On May 23, 2012, at 3:14 PM, Janet K. Adachi wrote:

1) I recommend the 7:45 spot to allow more time for presentation, Q&A.

2) I recommend that Kelley

-get the new PILOT information (amount, formula) to Brian as early as possible so he can confer with Steve L (maybe have something in packet, too, to make best use of appointment time?).

-forward the draft agreement to Christine for inclusion in the BOS packet. I believe she needs it no later than Weds, 5/30, but I'll let her clarify.

Thanks. Janet

Janet K. Adachi
978-340-0746
Sent via iPhone wireless

On May 23, 2012, at 2:36 PM, Christine Joyce <cjoyce@acton-ma.gov> wrote:

I don't know about Pilot's but Kelly has offered to draft something the board can act on at the June 4 BOS Meeting.

Depending on how much time this will take, I have an opening at 7:10 for 5 or so minutes or at 7:45 for 10-15 Minutes. Let me know ASAP for scheduling

From: Steve Ledoux
Sent: Wednesday, May 23, 2012 1:26 PM
To: Janet Adachi; Christine Joyce
Cc: Brian McMullen
Subject: RE: BOS, 6/4 agenda - room for AHA issues?

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Steven L Ledoux
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From: Kelley Cronin [<mailto:kelley@actonhousing.net>]
Sent: Friday, May 18, 2012 5:30 PM
To: 'Pamela Harting-Barrat'
Cc: 'Janet K Adachi'
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